

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

TASSOS EPICUREAN CUISINE, INC.,

Plaintiff,

v.

Case No. 05-CV-71510-DT

TRIAD BUSINESS SOLUTIONS, INC., et al.,

Defendants.

**ORDER DIRECTING DEFENDANTS TO FILE STIPULATION OR MOTION FOR
LEAVE TO ADD ADDITIONAL PARTY UNDER FED. R. CIV. P. 13(h)**

On June 6, 2005, Defendants filed a "Counter Complaint" in the above-captioned civil action, asserting breach of contract counterclaims not only against Plaintiff Tasso Epicurean Cuisine, Inc., but also against Anastasios Bozadizis, a party not previously part of this action.

Under Federal Rule of Civil Procedure 13, Defendants must assert compulsory counterclaims and may assert permissive counterclaims. Fed. R. Civ. P. 13(a) &(b). The court recognizes that Defendants also may be entitled to joinder of additional parties such as Bozadizis pursuant to Federal Rule of Civil Procedure 13(h); *Various Markets, Inc. v. Chase Manhattan Bank, N.A.*, 908 F. Supp. 459, 470-71 (E. D. Mich. 1995). Rule 13(h) provides:

Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

Fed. R. Civ. P. 13(h).

Rule 13(h) was amended in 1966 to provide explicitly for the addition of parties to a counterclaim where the mandatory and permissive joinder rules would permit or

require. At the same time, the requirement that a court order be obtained to join additional parties under the rule was dropped without comment. See *Mountain States Sports, Inc. v. Sharman*, 353 F. Supp. 613, 618 (D. Utah 1972). The general practice, however, continues to contemplate a court order to add parties. See *id.*;

6 Charles Aland Wright, et al., Federal Practice and Procedure § 1434 (“Although not required by Rule 13(h), the general practice is to obtain a court order to join an additional party.”).

Although the joinder rules are construed liberally and aimed at administering complete and evenhanded justice for all issues arising from one set of facts expeditiously and economically, see, e.g., *Various Markets Inc.*, 908 F. Supp. at 471, the court finds that requiring a court order will insure orderly compliance of proposed additional parties under the requirements of Rules 19 and 20. Accordingly,

IT IS ORDERED that Defendants file a motion or stipulation by the parties to add proposed counter-defendant Anastasios Bozadzis pursuant to Federal Rule of Civil Procedure 13(h) **no later than July 19, 2005**. If concurrence is not obtained, Plaintiff shall file its written response to Defendants’ motion in the ordinary course as permitted by the local rules.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: July 6, 2005

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, July 6, 2005, by electronic and/or ordinary mail.

S/Lisa G. Teets
Case Manager and Deputy Clerk
(313) 234-5522